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10/574,836	08/09/2006	Alain Behar	Q94335	5015
23373	7590	04/14/2010	EXAMINER	
SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037			WOOD, JONATHAN K	
			ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/574,836	Applicant(s) BEHAR ET AL.
	Examiner JONATHAN WOOD	Art Unit 3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 30 December 2009.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,4,8-18 and 20-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,4,8-18 and 20-24 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO/SB/06)
 Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____
- 5) Notice of Informal Patent Application
 6) Other: _____

DETAILED ACTION

Claim Objections

1. Claim 18 is objected to because of the following informalities: lines 14-15 refer to the "connection channel" which is confusing terminology because the channel was not originally defined as a "connection channel" but simply a channel. Appropriate correction is required.
2. Claims 21 and 22 are objected to because of the following informalities: both claims omit the word "the" before "inlet duct" and "core". Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claims 4, 8-13 and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 4 recites the limitation "the connection channel" in line 4. There is insufficient antecedent basis for this limitation in the claim.

Claim 10 recites the limitation "the flexible casing" in line 3. There is insufficient antecedent basis for the casing being flexible in the claim.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 4-8, 10, 11, 13, and 16-24 are rejected under 35 U.S.C. 102(b) as being anticipated by US PGPUB No. 2003/0071085 to *Lasserre et al. (Lass)*.

Regarding claim 1, *Lass* shows a fluid dispenser head for mounting on an actuator rod (12) of a pump (¶18, II. 8-9) that is displaceable down and up along an axis (A, Figure 3B of *Lass* below, as annotated by examiner), the head having an axial connection sleeve (22) for engaging on the actuator rod (¶ 51, II. 2-4) and defining an inlet duct (23), a dispenser endpiece (40) defining an endpiece channel (area between top line and top of 40 in Figure 3B below, as annotated by examiner), the endpiece including a dispenser orifice (48) at a downstream end of the endpiece channel, and a bearing surface (top side of 47 to 46) on which axial pressure can be exerted, wherein the endpiece extends substantially parallel to and offset from the axis (extends along axis X in Figure 3B which is laterally offset from axis A), and wherein the bearing surface extends axially downstream from the connection sleeve and intersects the axis (intersects the axis A at the top portion of 47, Figure 3B below, as annotated by examiner), the head further comprising a base skirt (29 to 31 and 32) that extends around the connection sleeve and has an outline in which the endpiece is inscribed

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(Figure 3B), the endpiece being actually tangential to the skirt (portion 28 is tangential to portion 29 and portions 47 and 46 are tangential to portion 31).

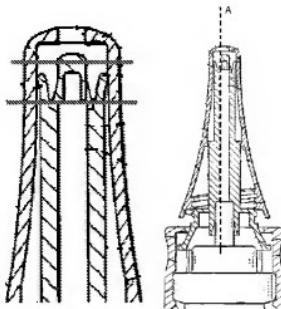


Figure 3B of *Lass*, as annotated by examiner

Regarding claim 4, *Lass* shows the head comprising an inner core (20) and an outer casing (40), the core being axially engaged in the casing (at 27 and 45), the core forming the connection sleeve and part of a connection channel (area between lines in Figure 3B above, as annotated by examiner), the casing forming the dispenser endpiece and a bearing wall (46 to 47) defining the bearing surface.

Regarding claim 8, *Lass* shows the core forms an axial spout (21 to 35) that is engaged in the endpiece (Figure 3B), a bottom portion of the endpiece channel being formed between the casing and the spout (Figure 3B above, as annotated by examiner).

Regarding claim 10, *Lass* shows the spout includes an end (35) that terminates in a position set back from the dispenser orifice (Figure 3B), a top portion of the endpiece channel being formed solely by the casing downstream from the spout,

(Figure 3B above, as annotated by examiner), the dispenser orifice being formed in the top portion (Figure 3B).

Regarding claim 11, *Lass* shows the core forms a bearing plate (34) into which the duct opens out axially (Figure 3B), the connection channel being formed between the plate and the casing (Figure 3B above, as annotated by examiner).

Regarding claim 13, *Lass* shows the core forms a collar (26) that is engaged in a base skirt (45) formed by the casing.

Regarding claim 16, *Lass* shows the bearing surface slopes (Figure 3B) and forms an angle of 90° relative to the axis (at top horizontal sections of 46 and 47), in such a manner as to intersect the axis (Figure 3B above, as annotated by examiner).

Regarding claim 17, *Lass* shows the dispenser endpiece is flexible (plastic material is inherently somewhat flexible).

Regarding claim 18, *Lass* shows a dispenser comprising a pump (¶18, II. 8-9) having an actuator rod (12) that is displaceable down and up along an axis (A, Figure 3B of *Lass* above, as annotated by examiner) and a dispenser head (10) comprising an axial connection sleeve (22) that connects to the actuator rod (¶ 51, II. 2-4) and defines an inlet duct (23), an endpiece (40) comprising an endpiece channel (area between bottom line and top of 40 in Figure 3B above, as annotated by examiner) connected to the inlet duct (Figure 3B above, as annotated by examiner), the endpiece including a dispenser orifice (48) at a downstream end of the channel, wherein the endpiece extends substantially parallel to and offset from the axis (extends along axis X in Figure 3B which is offset from axis A), and a bearing surface (top side of 47 to 46) on which

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axial pressure can be exerted, wherein the bearing surface intersects the axis (intersects the axis A at the top portion of 47, Figure 3B below, as annotated by examiner), the head further comprising an inner core (20) and an outer casing (40), the core being axially engaged in the casing (at 27 and 45), the core forming the connection sleeve and part of the channel (Figure 3B above, as annotated by examiner), the casing forming the dispenser endpiece and a bearing wall (46 to 47) defining the bearing surface.

Regarding claim 20, *Lass* shows a shape of an inner surface of the casing corresponds with a shape of the outer surface of the core (Figure 3B).

Regarding claims 21 and 22, *Lass* shows the inlet duct extends completely through the core (Figure 3B) along the axis (Figure 3B above, as annotated by examiner).

Regarding claim 23, *Lass* shows a dispenser device comprising a pump (¶18, II. 8-9) having an actuator rod (12) that is displaceable down and up along an axis (A, Figure 3B of *Lass* above, as annotated by examiner), and a dispenser head comprising a core (20) comprising an axial connection sleeve (22) that connects to the actuator rod (¶ 51, II. 2-4) and defines an inlet duct (intersection of cavity formed by 22 with 23), the core further comprising an endpiece (21 and 24) that extends parallel to and offset from the axis (centrally extends along axis X in Figure 3B which is offset from axis A), the core further comprising a channel (23) running from the inlet duct to a distal end of the endpiece (at 36, Figure 3B), and an outer casing (40) covering the core such that the outer casing closes the channel thereby forming a duct (channel between 2 lines in

Figure 3B above, as annotated by examiner) that runs from the inlet duct to the distal end (35) of the endpiece.

Regarding claim 24, *Lass* shows the dispenser head having a bearing surface (top side of 47 to 46) on which axial pressure can be exerted, wherein the bearing surface intersects the axis (intersects the axis A at the top portion of 47, Figure 3B below, as annotated by examiner).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claims 1 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 4,775,081 to *Morane (Morane)*.

Morane shows a fluid dispenser head comprising an axial connection sleeve (skirt below 11b in Figure 1) defining an inlet duct (11b), a dispenser endpiece (40) defining an endpiece channel (11a), a dispenser orifice at a downstream end of the endpiece channel (Figure 1), a connection channel (middle portion of 11) connecting the inlet duct and endpiece channel, a bearing surface (9) on which axial pressure (F, Figure 3) can be exerted, and a base skirt (5) that extends around the connection sleeve and in which the endpiece is inscribed, wherein the endpiece extends substantially parallel to and offset from the axis (Figure 3), and wherein the bearing surface extends axially downstream from the connection sleeve and intersects the axis (Figure 1).

Morane does not disclose the endpiece being axially tangential to the skirt. However, it would have been obvious to one having ordinary skill in the art at the time of the invention was made to have utilized the device of *Morane* on a variety of container sizes, including one which is the same diameter as the portion 9, therefore requiring the skirt portion 5 to be resized according to the size of the particular container to be utilized. It would also have been obvious to relocate the skirt portion since it has been held that rearranging parts of an invention involves only routine skill in the art. In re Japikse, 96 USPQ 70. The resulting modification, given a container size approximately the same diameter as the portion 9, would result in the endpiece being axially tangential to the skirt when the device is in the configuration of Figure 3.

Regarding claim 14, *Morane* shows the dispenser endpiece having a flat spatula shape (Figure 3).

10. Claims 15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Morane* in view of US Patent No. 3,428,223 to *Lewiecki et al.* (*Lew*).

Morane shows all aspects of applicant's invention as set forth in claim 1, but does not disclose the dispenser orifice being formed by a self-sealing flexible slot. However, *Lew* shows a dispenser head (10) in which the dispenser orifice (20) is formed by a self-sealing flexible slot (24 with 28, col. 2, ll. 46-51). It would have been obvious to one having ordinary skill in the art at the time of the invention to have, under the teachings of *Lew*, to have provided the dispenser head of *Morane* with a dispenser orifice having a self-sealing flexible slot in order to seal off the discharge channels subsequent to use and thereby prevent clogging of such passages (*Lew*, col. 1, ll. 43-46).

Allowable Subject Matter

11. Claims 9 and 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

12. Applicant's arguments with respect to the 35 USC 102(b) and 35 USC 103(a) rejections over *Wells* have been considered but are moot in view of the new ground(s) of rejection.

13. Applicant's arguments with respect to the 35 USC 102(b) rejection of claim 18 over *Lass* have been fully considered but they are not persuasive. Applicant first argues that *Lass* does not disclose "a pump having an actuator rod displaceable along an axis". However, examiner refers applicant to ¶18, lines 8 and 9 of *Lass* which disclose the device of *Lass* being used on a pump instead of a valve. Applicant then argues that elements 46 and 47 can not be considered as a bearing surface. However, given the teachings of *Lass* to use the dispenser head on a vertically actuated valve or pump, examiner argues that 46 and 47 do in fact represent bearing surfaces on which a user can press downwardly as well as laterally. Applicant further argues that neither element 46 or 47 intersects the axis. However, given examiner's definition of axis A in Figure 3B above, it can be seen that the axis does in fact intersect wall 47 (see Figure 3B above, as annotated by examiner). Finally, applicant argues that the endpiece of *Lass* is axial, and not offset away from the axis. However, given examiner's definition of axis A in Figure 3B above, the endpiece's axis (X) is indeed laterally offset from A.
14. Applicant's arguments with respect to the 35 USC 102(b) rejections over *Morane* have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JONATHAN WOOD whose telephone number is (571)270-7422. The examiner can normally be reached on Monday through Friday, 7:30 AM to 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571)272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JKW/
Examiner, Art Unit 3754

/Kevin P. Shaver/
Supervisory Patent Examiner, Art Unit 3754